

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.3923/Del/2019, A.Y.2014-15)

Xchanging Technology Services India Pvt. Ltd. Rectangle-1, D-4 District Centre, Saket New Delhi PAN : AABCR5609L	Vs.	ACIT, Circle-27(2), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Satyen Sethi, Adv. & Sh. A T Panda, Adv.
Respondent by	Sh. V K Dubey, SR DR

Date of Hearing	17/01/2024
Date of Pronouncement	23/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax(Appeals)-44, New Delhi ["Ld. CIT", for short], dated 27/02/2019 for the Assessment Year 2014-15.

2. Grounds of the assessee are as under :-

"1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals)-44, New Delhi (the CIT(A)) has erred in upholding disallowance of Rs.51,48,128/- u/s 14A of Income tax Act, 1961 (the Act).

1.1 That on the facts and circumstances of the case and in

law, the CIT(A) did not appreciate that in the absence of exempt income, no disallowance under section 14A was called for and that suo-moto disallowance made by the Appellant in the return was no impediment because there is no estoppel against law.

1.2 That on the facts and circumstances of the case and in law, the CIT(A) in exercise of appellate powers ought to have allowed the relief of Rs.51,48,128/-, for the legal position is settled that Goetze (India) Ltd v. CIT [2006] 284 ITR 323 (SC) did not impinge upon the powers of the appellate authorities.

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding adjustment of rent / lease equalization reserve of Rs.36,06,899/- under section 115JB of the Act.

2.1 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that rent / lease equalization reserve was neither a reserve covered by Explanation 1(b) to section 115JB nor was it a provision for unascertained liability within the meaning of Explanation 1(c) to section 115JB of the Act.

2.2 That on the facts and circumstances of the case and in law, the CIT(A) did not appreciate that Stryker Global Technology Center (P) Ltd. v. ACIT [2017] 163 ITD 200 (Del) was not applicable to the present case.

That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.”

3. Brief facts of the case as mentioned in the order of the CIT(A) are that, the return of income was filed declaring the total income of Rs. 44,45,01,460/- under normal provisions of the Income Tax Act, 1961 ('the Act') and book profits of Rs. 75,97,27,783/- under section 115JB of the Act (provisions for Minimum Alternate Tax ('MAT')). The tax liability was determined at Rs. 15,92,42,742/- under section 115JB of the Act along with interest liability of Rs. 1,04,748/- under section 234C of the Act. The same was duly discharged by way of advance tax and tax deducted at source and a refund of Rs. 99,51,200/- was claimed. The aforesaid Return Of Income was selected for scrutiny proceedings pursuant to which, the matter relating to the international transactions entered into by the Assessee with its Associated Enterprises was referred to the Transfer Pricing Officer ('TPO' for short). The Ld. TPO vide its order dated October 06, 2017, determined transfer pricing adjustment of Rs. 33,29,387/-. Subsequent to receipt of order from the TPO, the Assessing Officer ('AO') passed the draft assessment order dated December 22, 2017 and thereafter, final Assessment Order dated February 15, 2018 came to be passed, wherein the AO made the following adjustment to the returned income under the normal provisions of the Act.

Particulars		Amount (Rs.)
Returned income under normal provisions of the Act (Rounded off)	(A)	44,45,01,460
Add: Transfer pricing adjustment	(B)	33,29,387
Add: Addition on account of delayed payment of employees' contribution to PF/ESI	(Q)	27,22,586
Assessed income under the normal provisions of the Act (Rounded Off)	(A+B + Q)	45,05,53,430

1.4. In addition to the above adjustments, the AO also made the following adjustments to the book profits of the Appellant under the MAT provisions of the Act:

Particulars		Amount (Rs.)
Returned income under MAT provisions of the Act	(A)	75,97,27,783
Add: Disallowance u/s 14A	(B)	51,48,128
Add: Adjustment of rent equalization reserve ('RER)	(Q)	36,06,899
Assessed income under MA T provisions of the Act	(A+B + C)	76,84,82,810

4. As against the assessment order dated 15/02/2018, the assessee preferred an appeal before the CIT(A), the Ld. CIT(A) vide order dated 27/02/2019, upheld the disallowance of Rs. 51,48,128/- made u/s 14A of the Act and further upheld the adjustment of rent/lease realization reserve of Rs. 36,06,899/- u/s 115JB of the Act. Aggrieved by the order of the Ld. CIT(A) dated 27/02/2019, the assessee preferred the present appeal on the grounds mentioned above.

5. The Ground No. 1 and its sub grounds are regarding upholding the disallowance of Rs.51,48,128/- u/s 14A of the Act. The Ld. Counsel for the

assessee submitted that since no exempt income was earned during the year, no disallowance u/s 14A deserves to be made and relied on the several reported Judgments.

6. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

7. Heard. The assessee had *suo-moto* disallowed Rs. 51,48,128/- u/s 14A of the Act. There was no exempt income was earned during the year which is evident from page No. 7 & 8 of the Assessment Order. Further in Assessee's own case for the Assessment Year 2016-17, vide order dated 27/09/2022 in ITA No. 9182/Del/2019, the disallowance made u/s 14A of the Act has been deleted by the Tribunal. Considering the settled position of law that in the absence of exempt income, no disallowance u/s 14A can be made, we find merit on the Ground No. 1 and its sub grounds, accordingly the disallowance made by the A.O. which was sustained by the CIT(A) is hereby deleting.

8. In Ground No. 2 and its sub Ground, the assessee is aggrieved by upholding the adjustment of rent/lease equalization reserve of Rs. 36,06,899/- u/s 15JB of the Act.

9. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has erred in upholding the adjustment of rent/lease equalization reserve of Rs. 36,06,898/- u/s 115JB of the Act when the rent/lease equalization reserve was neither reserve covered by Explanation 1(b) to Section 115JB or was it a provision for unascertained liability within the meaning of Explanation 1(c) to Section 115JB of the Act. The Ld. Counsel has also taken us through the various Judgments of Hon'ble High Court and the Supreme Court and sought for deletion of the adjustment of rent/lease equalization reserve u/s 115JB of the Act.

10. Per contra, the Ld. Departmental Representative relied on the order of CIT(A) and submitted that the finding of the Ld. CIT(A) and conclusion are based on the order of the Co-ordinate Bench of the Tribunal in the case of Stryker Global Technology Vs. ACIT reported in 163 ITD 200 (Del), therefore, the Grounds of appeal No. 2 and its sub grounds *sans* merit, thus sought for dismissal of the above grounds.

11. We have heard both the parties and perused the material available on record. The assessee entered into lease agreement for office at Bangalore, Shimoga, Thane (Mumbai) and Manesar (Gurgaon) and the details of the agreement are as under:-

<i>Lease Premises</i>	<i>Name of Lessor</i>	<i>Lease dated deed</i>	<i>Initial lease period</i>	<i>Renewal Clause with escalation</i>
<i>Bangalore(Page 108-131)</i>	<i>SRJ Infrastructure Pvt. Ltd.</i>	<i>25.03.2007 & 28.06.2012</i>	<i>5 years-lock in period 3 years</i>	<i>Page 112-131 & Pg 105-107</i>
<i>Shimoga (Page 132-148)</i>	<i>Xchanging Builders (India) Pvt. Ltd.</i>	<i>16.08.2013</i>	<i>4 years-lock in period 2 years</i>	<i>Page 134 & 135</i>
<i>Shimoga (Page 149-173)</i>	<i>Xchanging Builders (India) Pvt. Ltd.</i>	<i>01.02.2014</i>	<i>4 years -lock in period 2 years</i>	<i>Page 151 & 153</i>
<i>Thane (Pg. 174-204)</i>	<i>PJS Securities Pvt. Ltd.</i>	<i>27.07.2011</i>	<i>5 years-lock in period 3 years</i>	<i>Pg. 177 & 178</i>

12. During the assessment proceedings, it was pointed out by the A.O. that the assessee had created rent equalization reserve of Rs. 36,06,899/- during the year. The assessee in its computation added back the same amount. As per the A.O. the said amount also be added back while making calculation u/s 115JB of the Act, but the assessee did not added back in its MAT Computation. The case of the assessee was that the lease realization reserve has been created pursuant to the provisions of AS-19. The Ld. A.O. observed that the said equalization reserve has been created on leases on buildings being used by the assessee and relying on the order of the Co-ordinate Bench of the Tribunal in the case of Stryker Global Technology Vs. ACIT (supra) held that provisions of AS-19 are not applicable to cancelable lease on immovable property, therefore, the same cannot be held that it is an ascertain liability and since, the assessee created a provisions, the same has been added back to book profit as per Explanation 1 Clause (c) of Section 115JB of the Act.

13. The question as to whether the lease equalization charges cannot be disallowed/deleted from the profit and loss account for the purpose of computing book profit u/s 115JB of the Income Tax Act or not has been answered in favour of the assessee by the various Courts. In the case of CIT Vs. M/s MFG India Pvt. Ltd. (2018) 254 Taxman 362 (Del). The Hon'ble Delhi High Court held as under:-

“9. The Court also held that the capital recovery can be known, as is evident, on deduction of financing charges from the lease rentals. In sum and substance, lease equalization charges "is a method of re-calibrating the depreciation claimed by the assessee in a given accounting period. The method employed by the assessee, therefore, over the full term of the lease period would result in the lease equalization amount being reduced to a naught, as the debit and credits in the profit and loss account would square off with each other." Therefore, the Revenue's contention that the amount is unknown to the Act - as held in the decision, is a mis-appreciation of what constitutes a lease equalization charge. Therefore, as long as the method of accounting follows some established principles, one of which includes offering only Revenue income for tax, we cannot find fault with the assessee debiting lease equalization charges in the AYs in issue, in its profit and loss account. It represents a true and fair view of the accounts, which is a statutory requirement under Section 211(2) of the Companies Act. For these reasons, the first question is answered in favour of the assessee and against the Revenue.”

14. Further in the case of CIT Vs. ICIC Venture Funds Management Company Ltd. (2015) 234 Taxman 569, the Hon'ble High Court of Karnataka held that lease equalization charges are not covered under any of the Clauses Explanation to Section 115JA (2) of the Act .

“6. This appeal was admitted to consider the following substantial questions of law:

"Whether the Appellate Authorities were correct in reversing the finding of the Assessing Officer that a sum of Rs.55,56,947/- as 'lease equalization account is in the nature of a reserve and the same had to be added back when computing the Book Profits as per Explanation u/s 115JA(2) of the Act.?"

7. The learned Counsel appearing for the Revenue submitted that the aforesaid amount of Rs.55,56,947/-, the 'lease equalization account' is in the nature of reserve and therefore it has to be added back when computing the book profits as per Explanation under Section 115JA(2) of the Act. Therefore he submits that a case for interference is made out.

8. Per contra, the learned Counsel appearing for the assessee supported the impugned order.

9. The Assessing Authority has added a sum of Rs.55,56,937/- to the Book Profits of the assessee on the ground that the transfer of lease equalization account was in the nature of reserve and hence needed to be adjusted to the Book Profits as per the requirement of Explanation to Section 115JA of the Act.

10. The 'lease equalization charges' is not one of the amounts which is covered under any of the clauses to Explanation to Section 115JA(2). It cannot be treated as a reserve. As the name suggest, this 'lease equalization charges' is nothing but the difference between the statutory depreciation on rentals and the recovery of cost of capital. Therefore, merely because the said amount entered in the P&L account, in effect, makes no difference. At any rate, it cannot be treated as a reserve. Therefore, both the Appellate Authorities were justified in directing deletion of the said amount.

Accordingly, we answer the substantial question of law in favour of the assessee and against the Revenue. No merit, appeal is dismissed.”

15. Considering the above facts that various High Courts including the Jurisdictional High Court have time and again held that the lease equalization charges are not to be treated as adjustments needing to be added back while computing book profits, u/s 115JA on account of explanation 1, we allow the Ground No. 2 and its sub Grounds of Appeal of the assessee and delete the addition made by the A.O. which has been sustained by the CIT(A).

16. In the result, Appeal filed by the Assessee is allowed.

Order pronounced in open Court on 23rd February, 2024

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: 23/02/2024
Binita/R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

